

Morgan Lewis

together

April 10, 2008

Globalization of Compliance – Test Case: Global SMAs



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Global SMA Developments - A Legal & Regulatory Framework

- Issues under Foreign and US Law
- Complexities
- Strategy

Issues under Foreign Law

- Firm registration
 - *Investment adviser*
 - *Broker-dealer*
 - *Bank*
- Individual Registration
- Investments Registration
- Tax on Doing Business
- AML
- Contract issues
 - *3rd Party Beneficiary Clauses*
 - *Formalities for authorization*
 - *Arbitration*
- Language issues
- Use of Solicitors
- Local Office Requirements
- Privacy
- Substantive Regulation of Investment Activity
 - *Approach to Conflicts*
 - *Soft Dollars*
 - *Commission Sharing Arrangements*
 - *Beneficial ownership reporting issues*

Issues under US Law

- AML
- Use of Foreign Solicitors
 - *NASD Rule on “Foreign Associates”*
 - *Advisers Act Rule on Cash Referral Fees*
 - *Foreign Corrupt Practices Act Issues*
- US Tax Issues
 - *Reporting and withholding*
 - *PFIC*
 - *Gift & Estate Tax*
 - *Dividends and Capital Gains*
- Prospectus Delivery Issues
- Holding Mail Issues
- Foreign Ownership Restrictions
- US Broker/Adviser Regulation Will Apply for Foreign Clients

Complexities

- Structure
 - *Single, Dual & Model*
 - *Local Host*
- Differing Institutional and De Minimus Exemptions
- Whether Country Participates or Follows EU Passport
- Legal Culture
 - *Opacity of Laws*
 - *Cultural Differences*
 - *Disharmony of Views*
 - *Need to Check Many Firms*
- “Minimum Contacts” Vary
 - *Local Presence*
 - *Advertising*
 - *Websites*
 - *Local Solicitors*
 - *Meetings*
 - *Signing Contracts Overseas*
 - *Having Assets Overseas*
- Reach of Foreign Regulation and Regulators

Strategies

- Prioritize Countries/Models
- Collect Available Information
- International Organization of Securities Commissioners, www.iosco.org
- Minimum Contacts; Securities Activities: Restatement (Third) of Foreign Relations Law of the United States
 - *Section 402 (Bases of Jurisdiction to Prescribe)*
 - *Section 403 (Limitations on Jurisdiction to Prescribe)*
 - *Section 416 (Jurisdiction to Regulate Activities Related to Securities)*
- Plan
- Confirm Views with Foreign Counsel

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